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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/814,742 | 04/01/2004 | James E. Mitchell | JMIT-25,712 | 7195 |

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02/21/2006

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| EXAMINER |
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PUROL, DAVID M

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| ART UNIT | PAPER NUMBER |
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3634

DATE MAILED: 02/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|-------------------------------|------------------------------------|--|
| Office Action Summary | Application No. 10/814,742 | Applicant(s) MITCHELL, JAMES E. | |
| | Examiner David M. Purol | Art Unit 3634 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 April 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 108.

The drawings are further objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 110; 114.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. The specification is objected to for it uses the reference numeral 10 to designate both the garage door and the head, wherein, only one particular reference numeral is to be used to denote a specific element.

Correction is required.

3. Claims 1-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is not known if the applicant is claiming the ventilated gate per se or in combination with the garage door. While claim 1, line 1 recites "A lift-up, ventilated gate for use with a garage door" and thereby sets forth that the claims are drawn to the ventilated gate per se, lines 12-13 state that the top of the ventilated gate engages a

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bottom of the garage door when the garage door is partially closed which can only be an accurate recitation if the garage door is a positively claimed element. Similarly for: claims 3 and 4 which state that the pin engages the receptacle when the ventilated gate is in an upright position and in engagement with the bottom of the garage door; claim 7 which states that the first and second cable and pulley system is connected to a first and second side of a top of the garage door so that when the garage door is lowered toward its closed position the cable and pulley systems raise the ventilated gate to an upright position so that the top of the ventilated gate engages a bottom of the garage door; claim 8 which sets forth that the garage door is moved in the garage door support by a garage door opener; claims 10-16 in their entirety recite structure of the ventilated gate in conjunction with the garage door. Likewise, claims 18-20 suffer from the above noted defects. Elements of an invention to which it is necessary to refer in order to define other elements of the invention are to be positively included in the claims. It is readily evident that the applicant's invention resides in the combination of the ventilated gate with the garage door and as such these claims are to be amended to positively include the garage door.

Claim 23 is further indefinite for it recites "the magnetic elements of an magnetic latch" for which there is no antecedent basis and "the proper raised position" for which its intended meaning is not understood.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

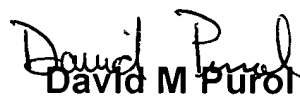
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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,2,5,7,18 as best understood are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Kincaid. Kincaid discloses a ventilated gate 1 having a cable connection 12,13 and pulleys 16,17. Inasmuch as it is not known if the applicant is intending to claim the garage door as a positively claimed element of the invention, no patentable weight has been attributed to the garage door or to any claim language making reference thereto.

5. The following prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Lucas, Eastridge et al, Swenson, Lubmann, Walls, Sorenson, Lampers, Messner, Manzo, Sferra, Plfeger.

6. Any inquiry concerning this communication should be directed to David M. Purol at telephone number (571) 272-6833.


David M Purol
Primary Examiner
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